

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

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HUDSON SURGICAL DESIGN, INC.,

Plaintiff,

v.

BIOMET ORTHOPEDICS, LLC and  
BIOMET MANUFACTURING  
CORPORATION,

Defendants.

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Case No. 3:10-cv-465

**DEFENDANTS' RESPONSE TO PLAINTIFF'S UPDATED STATUS REPORT**

Defendants Biomet Orthopedics, LLC and Biomet Manufacturing Corporation

(collectively "Biomet") submit this response to Hudson Surgical Design, Inc.'s ("Hudson") updated status report filed Oct. 11, 2011, because Hudson's status report fails to note two critical points.

First, on Aug. 28, 2011, the USPTO issued an Action Closing Prosecution in *Inter Partes* Reexamination Control No. 95/001,469 against Hudson's U.S. Patent No. 7,344,541 ("the '541 patent"). The Action Closing Prosecution reaffirmed previously issued rejections that invalidate every single claim of the '541 patent, Claims 1-54. (*See* 8/29/11 Action Closing Prosecution, attached as Ex. 1, at 4-11.) In fact, the Action Closing Prosecution rejected virtually all of Claims 1-54 of Hudson's '541 patent as both anticipated by multiple different prior art references provided by Biomet and also as obvious in view of multiple prior art combinations provided by Biomet.

Second, in its unsuccessful attempt to overcome rejections issued by the USPTO, Hudson has been forced to amend its claims in multiple and material respects. Notably, on Sept. 29, 2011 in response to the Action Closing Prosecution, Hudson filed its Patent Owner Comments/Amendments and made a second set of amendments to 14 claims, including the majority of the independent claims. Accordingly, in the unlikely event that Hudson eventually overcomes all of the USPTO's validity rejections, any claims that issue are likely to be the substantially different from the original claims of the '541 patent.

Accordingly, this case should remain stayed until the validity and scope of the '541 patent are determined by the USPTO.

Dated: October 26, 2011.

Respectfully submitted,

s/ Christopher R. Putt

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**CERTIFICATE OF SERVICE**

I certify that service of the above document was made on October 26, 2011,

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